

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 97-124-C - ORDER NO. 2000-0169
FEBRUARY 22, 2000

IN RE: Request of BellSouth Telecommunications,)	ORDER ON PETITION
Inc. for Approval of Revisions to its General)	FOR RELIEF AND
Subscriber Service Tariff and Access Service)	REQUEST FOR
Tariff to Comply with the FCC's)	CLARIFICATION
Implementation of the Pay Telephone)	
Reclassification and Compensation Provisions)	
of the Telecommunications Act of 1996.)	

INTRODUCTION

This matter comes before the Public Service Commission of South Carolina on the Petition for Relief ("Petition") filed by the South Carolina Public Communications Association ("SCPCA"). By its Petition, the SCPCA requests that the Commission commence proceedings to hold BellSouth Telecommunications, Inc. ("BellSouth") accountable for its failure to comply with Commission Order No. 1999-285 and No. 1999-496 (referred to collectively herein as "Commission Orders").

Specifically, the SCPCA alleges that BellSouth has (1) failed to provide refunds in violation of the Commission's Orders, (2) failed to implement the PTAS rate set by this Commission, and (3) filed tariff pages which do not comply with the Commission's Orders in that the effective date listed on the tariff pages is different from the effective date set forth in Commission Order No. 1999-285. The SCPCA asserts that the Commission's Orders required BellSouth to provide refunds to its PTAS customers in

South Carolina by September 27, 1999, and that BellSouth has failed to make the required refunds. According to the Petition, BellSouth's failure to provide the required refunds within the time required by the Commission's Orders is a violation of terms of those orders. Further, the SCPCA alleges that BellSouth is not charging its PTAS customers the rate set by the Commission in the Commission's Orders and reflected in the tariff of BellSouth. Rather, the SCPCA states that BellSouth continues to charge the PTAS customers a rate in excess of the rate set by the Commission in Order No. 1999-285 and No. 1999-496 and a rate different from the rate contained in BellSouth's tariff. Finally, the SCPCA states that the tariff filed by BellSouth does not bear the effective date of April 15, 1997, as mandated by Order No. 1999-285. Instead, the SCPCA states that the tariff bears the effective date of July 19, 1999.

The SCPCA requests as relief that the Commission commence proceedings against BellSouth in the Court of Common Pleas for Richland County (1) to seek a citation holding BellSouth in contempt of the Commission pursuant to S. C. Code Ann. Section 58-9-1210, (2) to force BellSouth to discontinue its violations of the Commission's Orders and South Carolina law pursuant to S.C. Code Ann. Section 58-9-770, and (3) to seek assessment of penalties against BellSouth pursuant to S.C. Code Ann. Section 58-9-1610 *et seq.* Further, the SCPCA requests that the Commission issue a reparations order to BellSouth pursuant to S.C. Code Ann Section 58-9-740 and assess prejudgment interest on refund amounts owed to the SCPCA from April 15, 1997, to September 27, 1999, and post-judgment interest on refund amounts owed after September 27, 1999. Alternatively, the SCPCA requests that the Commission use the enforcement

powers of S.C. Code Ann. Section 58-9-820 to force BellSouth to comply with the orders of the Commission and with South Carolina law and require BellSouth to pay prejudgment and post-judgment interest on the refunds owed to PTAS customers in South Carolina, as well as reasonable expenses and attorneys' fees incurred by the SCPCA in seeking refunds and filing this Petition. Or alternatively, the SCPCA requests that the Commission issue a Rule to Show Cause Order requiring BellSouth to appear and show cause why it should not be subject to the proceedings described in the Petition for failure to comply with Commission Orders and South Carolina law.

BellSouth filed an Answer to the SCPCA's Petition and stated that "BellSouth is in substantial compliance with the Orders of the ... Commission having issued partial refunds to the vast majority of ... PSPs, however, BellSouth acknowledges that subsequent problems have arisen in attempting to complete the refund process."

BellSouth's Answer, p.1. BellSouth further stated that it notified counsel for the SCPCA and the Commission's Executive Director that it was unable to complete the refund process within the timeframe ordered by the Commission. BellSouth asserts that the problems of completing the refund process are due to technical problems, implementation issues, and issues associated with Y2K compliance. Further, BellSouth admits that at the time it notified counsel for the SCPCA that BellSouth committed to issue a check for the full amount of the refund plus interest at 8.75% to those PSPs that have received no refund. Further, BellSouth offered to allow PSPs to withhold payments on current charges until the refund could be calculated. Further, BellSouth committed to pay the

balance owed on the refund plus interest at 8.75% to the PSPs that received a partial refund.

In its Answer, BellSouth also stated that by September 27, 1999, it had mailed refund checks as required by the Commission Orders totaling approximately \$10 million dollars to approximately 16,300 PSP lines for the period April 15, 1997, through July 31, 1999. However, BellSouth also admitted that approximately 2,100 PSP lines received partial refunds or did not receive any refund due to programming errors involving local exception areas. BellSouth noted that it discovered the information concerning the partial and no refunds on November 29, 1999. BellSouth stated that it maintains its commitment to all affected PSPs and stated that all refunds will be postmarked by January 31, 2000. BellSouth then submits that since it “self-reported” this matter to the PSPs and the Commission that the Petition should be dismissed or, alternatively, be held in abeyance pending BellSouth’s commitment to issue all refund checks by January 31, 1999.

DISCUSSION OF PETITION FOR RELIEF

Upon consideration of this matter, the Commission finds it appropriate to hold the Petition for Relief in abeyance pending BellSouth’s commitment to issue all checks accurately, including interest at an annual rate of 8.75%, by January 31, 2000. Further, the Commission finds that BellSouth should pay legal fees incurred by the SCPCA in seeking the refunds in an amount not to exceed (i.e. capped) \$2,000. In reaching this decision, the Commission takes into account that BellSouth “self-reported” the errors involved in the refund process upon discovery of the errors. While BellSouth asserts that it is in “substantial compliance” with the Commission Orders, BellSouth likewise

acknowledges that it has encountered problems which have prevented full compliance with the Commission Orders. Thus, a technical violation of the Commission Orders occurred in that the full refunds were not completed within the time limits imposed by the Commission Orders. However, as previously stated, BellSouth itself reported these errors. Therefore, the Commission concludes it reasonable and proper to hold the Petition for Relief in abeyance on the condition that BellSouth issue all refund checks, including interest at an annual rate of 8.75%, accurately by January 31, 2000, as BellSouth committed it would do in its Answer. Further, as the SCPCA was forced to incur legal expenses in filing the Petition for Relief to secure its refunds, the Commission finds that BellSouth should pay legal fees to the SCPCA not to exceed \$2,000.

REQUEST FOR CLARIFICATION

After the Commission's decision but before an Order was issued memorializing the Commission's decision on the SCPCA's Petition for Relief, the SCPCA filed a letter requesting clarification on the interest rate that would accrue. The SCPCA asserts that post-judgment interest is most appropriate in this case. In support of its position, the SCPCA argues that the Commission Orders obligated BellSouth to pay refunds on or before September 27, 1999, and that this decision was in the nature of a money judgment with the force and effect of law. According to the SCPCA, post-judgment interest, rather than prejudgment interest, is more appropriate in this matter since BellSouth failed to pay the refunds on September 27, 1999. Further, the SCPCA cites to case law indicating that the purpose of post-judgment interest is to penalize a judgment debtor for failing to pay a judgment.

BellSouth filed a “Response to Request for Post-judgment Interest Rate” (“Response”). By its response, BellSouth asserts that post-judgment interest is not appropriate because “no judgment has been entered against BellSouth which has been appealed by BellSouth.” Response, p. 6. Further, BellSouth offers that if a change in the interest rate is made then all work for the refund for the exception areas would be useless and programming for the refund would have to be restarted. BellSouth states that a change in the interest rate would require additional time as the work already begun would be useless and that BellSouth could not commit to issuing refund checks prior to February 29, 2000.

RULING ON CLARIFICATION

S.C. Code Ann. Section 34-31-20 is entitled “Legal Rate of Interest” and provides

(A) In all cases of accounts stated and in all cases wherein any sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum. (8.75% per annum)

(B) All money decrees and judgments of courts enrolled or entered shall draw interest according to law. The legal interest shall be at the rate of fourteen percent per annum. (14.0% per annum)

The SCPCA asserts that the Commission Orders, which obligated BellSouth to pay refunds on or before September 27, 1999, were in the nature of a money judgment with the force and effect of law. The Commission agrees with the SCPCA’s position and finds BellSouth’s position without merit as it does not matter that BellSouth did not appeal the prior Commission Orders. Under the Commission Orders, BellSouth was required to pay refunds by September 27, 1999. The Orders of the Commission were not

appealed and are therefore the law of this case. Further, orders of the Commission have the force and effect of law. *See, Hamm v. South Carolina Public Service Commission*, 309 S.C. 295, 422 S.E.2d 118 (1992). As the Commission Orders required BellSouth to pay refunds by a date certain, the Commission Orders in this matter have the effect of being a money judgment against BellSouth for the amount of the refunds.

In *Chambers v. Pingree*, 334 S.C. 349, 513 S.E.2d 369 (1999), the Supreme Court of South Carolina stated that “[i]nterest at the post-judgment rate does not begin until a judgment is entered in a sum certain.” By its Order, the Commission directed the time period and the rate to be applied for the calculation of the refund. The Commission finds that while the amount of refund due each customer has not been calculated, the measure of recovery for each customer is fixed and the sum certain of each refund is capable of being determined. All that remains to ascertain the refund for each customer is for BellSouth to perform the computations. Thus the amount of the refunds is identifiable, and BellSouth is the entity which must provide that amount.

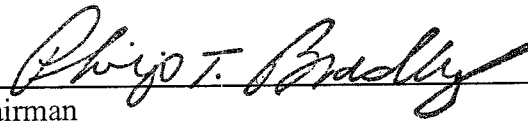
Also in *Chambers*, the Court, citing *Sears v. Fowler*, 293 S.C. 43, 45, 358 S.E.2d 574, 575 (1987) stated “[t]he purpose of post-judgment interest, however, is ‘to penalize non-payment of a judgment by a judgment debtor’.” Since the refunds were due as payable on September 27, 1999, the Commission finds that the Commission Orders, which obligated BellSouth to pay refunds on or before September 27, 1999, were in the nature of a money judgment with the force and effect of law and that post-judgment interest rate of 14% per annum as found in S.C. Code Ann. Section 34-31-20(B) is

appropriate and should be applied to refunds from September 27, 1999, until the refunds are fully paid by BellSouth.

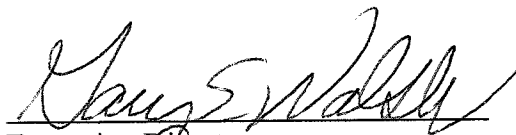
IT IS THEREFORE ORDERED THAT:

1. The Petition for Relief filed by the SCPCA is held in abeyance.
2. BellSouth shall pay legal fees incurred SCPCA in seeking refunds and filing the Petition for Relief. The amount of recoverable legal fees is capped at \$2,000.
3. Refunds shall include interest at an annual rate of 14% from September 27, 1999, until the date refunds are fully paid.
4. All refund checks shall be issued by February 29, 2000.
5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)